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82-1515

IN THE
Supreme Court of the United States

October Term 1982

DELAWARE RIVER BASIN COMMISSION, et al.
Respondents

v.

BUCKS COUNTY WATER AND SEWER AUTHORITY,
Petitioner

**ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE THIRD CIRCUIT**

**BRIEF IN OPPOSITION SUBMITTED ON BEHALF
OF RESPONDENTS UNITED STATES STEEL
CORPORATION, BETHLEHEM STEEL
CORPORATION AND BETHLEHEM
MINES CORPORATION**

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<i>Delaware River Basin Compact</i> , Act of September 27, 1961, Pub. L. 87-328, 75 Stat. 688; 7 Del. Code Ann. §§6501, 6511 et seq.; N.J. Stat. Ann. §§32.11 D-1 et seq.; New York Conservation Law, §§801 et seq. (McKinney); 32 Purdons §§815.101 et seq.	5
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NOW COME Respondents United States Steel Corporation, Bethlehem Steel Corporation and Bethlehem Mines Corporation (hereinafter "Respondents")¹ and respectfully request that this Court deny the Petition for Writ of Certiorari seeking review of the Opinion of the United States Court of Appeals for the Third Judicial Circuit in this case.

1. Pursuant to Rule 28(1) of the Rules of the Supreme Court, Respondents have attached hereto as Exhibit A a list of all parent companies, subsidiaries (except wholly-owned subsidiaries) and affiliates.

I. STATEMENT OF QUESTIONS PRESENTED FOR REVIEW

Contrary to the assertion of the Petition for Writ of Certiorari, the constitutionality of the Delaware River Basin Compact itself has never heretofore been questioned and, accordingly, is not an issue which may be properly raised before this Court now.

II. STATEMENT OF THE CASE

A. Procedural

This proceeding was commenced in 1977 as a suit by the Plaintiff, Delaware River Basin Commission ("DRBC"), against the Bucks County Water and Sewer Authority ("Bucks County") and the City of Philadelphia. DRBC sought to recover charges for Delaware River water acquired by Bucks County from Philadelphia. Philadelphia cross-claimed against Bucks County requesting indemnification. DRBC moved for summary judgment against both Defendants who cross-moved for summary judgment against DRBC.

On July 27, 1979, the United States District Court for the Eastern District of Pennsylvania granted DRBC's motion for summary judgment and denied those filed by the defendants. See *Delaware River Basin Commission v. Bucks County Water and Sewer Authority*, 474 F.Supp. 1249 (E.D. Pa. 1979) (A-60).² In doing so, the Court spe-

2. Refers to *Appendix to Petition of Bucks County Water and Sewer Authority for Writ of Certiorari*, page 60. All of the prior opinions in this matter shall be cited hereinafter as *DRBC v. Bucks County*.

cifically rejected the contention of Bucks County that DRBC Resolution 74-6 (A-134) violated the constitutional guarantee of equal protection of the law. 474 F.Supp. at 1255 (A-70).

Bucks County appealed the District Court's decision to the Third Circuit. The only constitutional issue presented by the appeal concerned Resolution 74-6. The appeal did not question the constitutional validity of Section 15.1(b) of the Compact itself. *DRBC v. Bucks County*, 641 F.2d 1087, 1091 (3rd Cir. 1981) (A-27, 32).

On February 18, 1981, the Third Circuit decided that, based upon the limited information available, it could not conclude that the Resolution is constitutional. *Id.* at 1100 (A-51-52). That Court, therefore, remanded the case to the District Court for the purpose of permitting the DRBC and other interested parties an opportunity to research and to further exemplify the rationale underlying the current exemptions. *Id.*

By Order of July 20, 1981, the District Court granted leave to intervene to twelve parties, including the three Respondents jointly submitting this memorandum (A-25). The parties filed cross motions for summary judgment and, by Order entered March 26, 1982, the District Court granted judgment in favor of DRBC and "plaintiff-intervenors" (A-3). On April 9, 1982, a notice of appeal was filed with the Third Circuit by intervenor, Western Berks Water Authority, and on April 13, 1982, another notice of appeal was filed by Bucks County. The appeals were docketed at Nos. 82-1232 and 82-1233, respectively, and on June 3, 1982, a motion to consolidate the appeals was granted. The Opinion of the District Court supporting its Order of March 26, 1982 was issued on June 30, 1982. *DRBC v. Bucks County*, 545 F.Supp. 138 (E.D. Pa. 1982) (A-4). Oral argument was held before the Third

Circuit, and on January 6, 1983, that Court issued its Judgment Order affirming the Opinion and Order of the District Court (A-1-2).

On or about March 11, 1983, Bucks County filed its Petition for Writ of Certiorari with this Court.

B. Factual

These Respondents are aware that a Brief in Opposition is to be filed by Respondent DRBC. We believe that DRBC's brief includes a sufficient statement of factual matters necessary to decide whether or not a writ should issue, and we, therefore, adopt and join with that statement.

III. SUMMARY OF ARGUMENT

The Petition for Writ of Certiorari should be denied because it fails to raise any important and unresolved federal question which requires a decision by this Court. Furthermore, the Third Circuit's Order affirming the Opinion of Judge Louis H. Pollok is in accord with the decisions of this Court which analyze the requirement of "equal protection".³

3. Respondents have been advised of the contents of the DRBC brief. Accordingly, Respondents have attempted to minimize repetition by merely supplementing portions of the DRBC Argument.

IV. ARGUMENT

Petitioner's arguments to this Court in support of its Petition for a Writ of Certiorari are limited. It argues (1) that the case involves a significant question of federal law and (2) that the decision below concerning the equal protection of laws conflicts with the applicable decisions of this Court.⁴

The issue involved in this case cannot objectively be characterized as a significant public or political question as alleged by Petitioner.⁵ It is really quite narrow, i.e. to what extent and in what manner may the DRBC charge users for water withdrawals from the Delaware River. The answer to the question affects a limited class in a limited geographical area. The interests involved are primarily state interests since it is the citizens of the Compact states who ultimately have to sustain the water withdrawal charges assessed by DRBC. Historically, the

4. See Rule 17(c) of the Supreme Court.

5. In point of fact, it is only in the most expansive sense that the issue as framed for this Court by Bucks County may even be considered to be federal. The Compact is first and foremost an agreement between the states of New York, New Jersey, Delaware and the Commonwealth of Pennsylvania. Delaware River Basin Compact, Act of September 27, 1961, Pub. L. 87-328, 75 Stat. 688; 7 Del. Code Ann. §§6501, 6511 et seq.; N.J. Stat. Ann. §§32.11 D-1 et seq.; New York Conservation Law, §§801 et seq. (McKinney); 32 Purdon's §§815.101 et seq. Although the federal government is an actual party to the Compact, the issue of water withdrawal charges does not affect any significant federal interest.

interests of individual users of Delaware Basin waters have been represented by the Compact states, acting *in parens patriae*, both in litigating their water rights disputes before this Court,⁶ and in entering into the Compact. See *Badgley v. New York*, 606 F.2d 358 (2nd Cir. 1979), *cert. denied*, 447 U.S. 906 (1980). It is noteworthy, therefore, that none of the states who are party to the Compact intervened on behalf of Bucks County. Instead, the states of New York and New Jersey and the Commonwealth of Pennsylvania have all opposed Bucks County.

The additional argument made by Bucks County is that the Third Circuit's decision conflicts with the applicable decisions of this court because there is, allegedly, no conceivable rational basis for the classification used by the DRBC rate system. Clearly the best response to this argument is the able and scholarly opinion rendered by the District Court, on remand. *DRBC v. Bucks County*, 545 F.Supp. 138 (E.D. Pa. 1982) (A-4). The whole point of the 1981 remand by the Third Circuit was to permit the District Court to analyze the purposes underlying DRBC Resolution 74-6 and to determine their constitutional propriety. *DRBC v. Bucks County, supra*, 641 F.2d at 1100 (A-27 at 51-52). As noted in Petitioner's statement of the case, a great deal of additional documentation concerning the history of the Compact was made available to the District Court on remand. That documentation enabled the District Court to place into

6. *New Jersey v. New York*, 280 U.S. 528 (1930); *New Jersey v. New York*, 283 U.S. 336 and 283 U.S. 805 (1931); *New Jersey v. New York*, 345 U.S. 369 (1953); *New Jersey v. New York*, 347 U.S. 995 (1954).

context and analyze in detail the purposes underlying DRBC Resolution 74-6.⁷ *DRBC v. Bucks County*, *supra* (A-4). The District Court's analysis obviously was sufficient to allay the concerns of the Third Circuit. Analysis of the District Court's decision will show that it is in strict accord with the decisions of this Court pertaining to requirements of equal protection of law. *Western and Southern Life Ins. Co. v. State Board of Equalization*, 451 U.S. 648 (1981); *Minnesota v. Cloverleaf Creamery Co.*, 449 U.S. 456 (1981); *New Orleans v. Dukes*, 427 U.S. 297 (1976).

Finally, Bucks County complains that the political process which was used to forge the Compact was abused or manipulated. When analyzed, however, its real complaint is that the political process was used at all. The basis of its complaint is simply that industrial users, who would have been among those most adversely affected by a grant of general ratemaking authority to DRBC, chose to exercise their rights to petition the legislatures, to

7. Petitioner now asks this Court to ignore the history of the Compact and to look only at the so-called "pooled water" theory which was earlier advanced by the DRBC as a partial rationale for the imposition of charges when Resolution 74-6 was being considered. See *Morrisville v. DRBC*, 399 F.Supp. 469 (E.D. Pa. 1975), *aff'd per curiam*, 532 F.2d 745 (3rd Cir. 1976). Despite Bucks County's advocacy of myopia, however, the regulation must be analyzed against the full background of the provisions of the Compact and the intent of those who approved them. Such an analysis was made by the District Court.

voice their concerns, and to seek clarification of the limitations on the powers given DRBC by the Compact.⁸

It has long been clear that inquiry into the "motives" of legislators when enacting statutes is impermissible. A constitutional enactment may not be struck down solely on the ground of an alleged improper motive. E.g., *United States v. O'Brien*, 391 U.S. 367 (1968). More to the point, however, it cannot be said that a legislature acts improperly when it responds to the petitions of those who would be affected by proposed legislation and acts to clarify that legislation.

Bucks County's efforts to transmute a constitutionally protected process into an "improper legislative purpose" deserve to be rejected. An appeal to the equal protection requirements of the Fifth and Fourteenth Amendments to the Constitution of these United States cannot and should not be used as a basis to undermine political processes and solutions. See *Gaffney v. Cummings*, 412 U.S. 735, 754 (1973); *Vance v. Bradley*, 440 U.S. 93 (1979); *Rogin v. Bensalem Township*, 616 F.2d 680, 687-688 (3rd Cir. 1980), *cert. denied*, *Mark-Garner Associates, Inc. v. Bensalem Township*, 450 U.S. 1029 (1981).

8. Through the course of this case there has never been a procedural opportunity to plumb Petitioner's argument to its depth. It seems, however, to be somewhat passionate and invidious in its overt suggestion that corporations, such as these Respondents, should be denied access to any political process. We question whether Petitioner would make the same arguments if the process had been used by individual riparian owners only.

V. CONCLUSION

Wherefore, for the above reasons, Respondents respectfully request that this Court deny the petition for certiorari filed by Bucks County Water and Sewer Authority.

Respectfully submitted,

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April 29, 1983

EXHIBIT A

Pursuant to Rule 28(1) of the Supreme Court, a listing of all parent companies, subsidiaries (except wholly-owned subsidiaries) and affiliates of Respondents follows:

RESPONDENT, UNITED STATES STEEL CORPORATION

1. Athlone Prospecting and Development Corporation Ltd. (Irish Republic)
2. Brazaco-Mapri Industrias Metalurgicas S.A. (Brazil)
3. Compagnie de Gestion de Mifergui-Nimba, Ltee.
4. Companhia Meridional de Mineracao (Brazil)
5. Industria de Tubos y Perfiles S.A. (INTUPERSA) (Guatemala)
6. Minerales Ordaz, C. A. (Venezuela)
7. Rama Sapyakorn Patana Limited (Thailand)
8. Terninoss Acciai Inossidabili S.p.A. (Italy)

RESPONDENTS, BETHLEHEM STEEL CORPORATION AND BETHLEHEM MINES CORPORATION

1. Bethlehem Singapore Private Limited
2. Hibbing Taconite Company
3. Erie Mining Company
4. Erie Mining Company, a Limited Partnership
5. Erie Development Company
6. Enstar/Bethlehem (Gas & Oil Joint Venture)
7. Kirby/Bethlehem (Gas & Oil Joint Venture)

8. Forest Oil/Bethlehem (Gas & Oil Joint Venture)
 9. Industria e Comercio de Minerios S.A.—Icomi (which in turn has more than 50 subsidiaries and affiliates)
 10. Iron Ore Company of Canada (which in turn has more than 10 subsidiaries)
 11. Itmann Coal Company
 12. Kaycee Bentonite Partnership
 13. Lamco Joint Venture
 14. Met-Mex Penoles, S.A. de C.V.
 15. Penoles Metals & Chemicals, Inc.
 16. Minera Apolo, S.A. de C.V.
 17. Presque Isle Corporation
 18. Restauradora de las Minas de Catorce, S.A. de C.V.
 19. Seadrill, Incorporated
 20. Southeast, Incorporated
 21. Thailand Offshore Joint Venture
 22. Bethlehem Hotel Corporation
 23. Mahoning Ore and Steel Partnership
 24. Nordex Joint Venture
 25. Nubeth Joint Venture
 26. Ontario Iron Company
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